IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.**247 OF 2005**

IN

FAMILY COURT APPEAL NO.**141 OF 2005**

Rashmikant B. Sanjaliwala .. ***Applicant***

Versus

Mrs. Neeta Rashmikant Sanjaliwala .. ***Respondent***

Mr. A.M. Vernekar for the applicant
Mr. G.K. Karkera for the respondent

CORAM : SMT.RANJANA DESAI,
& SMT.V.K. TAHILRAMANI,JJ.
DATED : 11TH OCTOBER,2006

P.C. :-

In this Civil Application, the applicant-husband has prayed that respondent-wife may be restrained from entering flat No. 501, Building No.4, Opp. Oshiwara Police Station, Adarsh Nagar Junction, Andheri (West), Mumbai-400053 (the said flat for short).

The challenge in the Family Court Appeal is to the judgement and order dated 21/07/2005 passed by the Family Court, Mumbai dismissing the petition filed by the applicant-husband for divorce on the ground of cruelty under section 13(1)(ia) of the Hindu Marriage Act, 1955. On 13/12/2005, the appeal is admitted. Since

the parties were exploring the possibility of settlement on 02/03/2006, order was passed in terms of Minutes of Order. As per the said order, the respondent-wife started residing with the applicant-husband in the said flat from 17/03/2006. Parties were expected to amicably resolve their differences.

Clause 3 of the Minutes of Order reads thus :

> " In the event of without prejudice settlement does not materialise during the said period or mutually agreed extended period, the Respondent hereby undertakes to this Hon'ble Court to vacate the said flat No.501."

This order was extended by subsequent order dtd. 10/07/2006. Today the applicant as well as the respondent are present in the Court. We have heard learned counsel appearing for the applicant. Learned counsel for the applicant on instructions from the applicant states that it is not possible for the applicant to stay with the respondent. According to him, the respondent is giving threats to him that she will launch criminal proceedings against him.

Learned counsel for the respondent on instructions from the respondent denied all these allegations. It is not possible for us at this stage to

say who is telling the truth. One thing is clear that parties can not stay together. Hence as per undertaking given by the respondent to this Court, we direct her to vacate the said flat within a week from from today.

We are informed that the respondent-wife has filed an application for maintenance in the Family Court. It is pending. We direct that the applicant-husband shall pay sum of Rs. 5000/- to the respondent-wife per month. The said amount will be paid in the first week of every month.

This order will not prevent the respondent from pursuing the pending maintenance application and Family Court shall pass appropriate orders thereon independently. Order of maintenance passed by us shall operate till the Family Court decides the pending application. We restrain the applicant from selling the said flat during the pendency of this appeal. He shall also not create any third party interest therein during the pendency of this appeal. The applicant shall pay maintenance at the rate of Rs. 5,000/- to the respondent for the period starting from July-2005 to February-2006 within a month from today. This amount will be adjusted after the Family Court passes orders on the pending maintenance application. We make it clear that we have not expressed any opinion on the

merits of the case.

Civil Application is disposed of.

(SMT. RANJANA DESAI,J.)

(SMT. V.K.TAHILRAMANI,J.)